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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

**CORNELE A. OVERSTREET,
Regional Director of the Twenty-Eighth
Region of the National Labor Relations
Board, for and on behalf of the
National Labor Relations Board,**

Petitioner,

v.

**BODEGA LATINA CORPORATION
d/b/a EL SUPER,**

Respondent.

Case No.

**PETITION FOR TEMPORARY
INJUNCTION UNDER SECTION 10(j)
OF THE NATIONAL LABOR
RELATIONS ACT, AS AMENDED
[29 U.S.C. § 160(j)]**

(Oral argument requested)

Cornele A. Overstreet, Regional Director of Region 28 (Regional
Director) of the National Labor Relations Board (Board), petitions this Court, for and on
behalf of the Board, pursuant to Section 10(j) of the National Labor Relations Act, as
amended [61 Stat. 149; 73 Stat. 544; 29 U.S.C. § 160(j)] (Act), for appropriate
injunctive relief pending the final disposition of the matters involved herein pending a
decision by the Board, on a complaint issued by the General Counsel of the Board

1 (General Counsel), alleging, inter alia, that Bodega Latina Corporation d/b/a El Super
2 (Respondent) has engaged in, and is engaging in, acts and conduct in violation of
3 Section 8(a)(1) and (3) of the Act [29 U.S.C. § 158(a)(1) and (3)]. In support of this
4 petition, Petitioner respectfully shows the following:

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6 1. Petitioner is the Regional Director of Region 28 of the Board, an agency
7 of the United States, and files this petition for and on behalf of the Board.

8 2. This Court has jurisdiction pursuant to Section 10(j) of the Act, which
9 provides, inter alia, that the Board shall have the power, upon issuance of a complaint
10 charging that any person has engaged in unfair labor practices, to petition this Court for
11 appropriate temporary injunctive relief or a restraining order pending final disposition
12 of the matter by the Board.

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14 3. (a) On January 6, 2015, the United Food and Commercial Workers
15 Local 99 (Union), filed a charge with the Board, in Case 28-CA-143974, alleging, inter
16 alia, that Respondent has engaged in, and is engaging in, unfair labor practices within
17 the meaning of Section 8(a)(1) and (3) of the Act. PX 3.¹

18 (b) On March 26, 2015, the Union filed a charge with the Board, in
19 Case 28-CA-148919, alleging, inter alia, that Respondent has engaged in, and is
20 engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the
21 Act. PX 7.

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23
24 ¹ Petitioner has filed evidence in support of this Petition, contained within an Appendix
25 of Exhibits, which includes the affidavits and supplemental exhibits. References to the
26 Appendix of Exhibits will be designated as “PX” followed by the appropriate exhibit
number, and, as appropriate, the page and line number(s) of the respective exhibit.

1 (c) On April 10, 2015, the Union filed a charge with the Board, in
2 Case 28-CA-149898, alleging, inter alia, that Respondent has engaged in, and is
3 engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the
4 Act. PX 5.

5
6 4. (a) The aforesaid charges were referred to Petitioner as Regional
7 Director for Region 28 of the Board.

8 (b) Upon receipt of the charges described above in paragraph 3, and
9 after the investigation of the charges in which Respondent was given the opportunity to
10 present evidence and legal argument, the General Counsel, on behalf of the Board,
11 pursuant to Section 10(b) of the Act [29 U.S.C. § 160(b)], issued an Order
12 Consolidating Cases, Consolidated Complaint and Notice of Hearing on April 22, 2015
13 (Complaint), alleging that Respondent engaged in, and is engaging in, unfair labor
14 practices within the meaning of Section 8(a)(1) and (3) of the Act. PX 11.

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16 (c) On May 6, 2015, Respondent filed its Answer to the Consolidated
17 Complaint (Answer), denying the commission of any unfair labor practices. PX 13.

18 (d) A hearing before an administrative law judge of the Board has been
19 noticed and is scheduled to commence on July 21, 2015, in Phoenix, Arizona.

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21 5. There is reasonable cause to believe that the allegations set forth in the
22 Complaint are true and Respondent has engaged in, and is engaging in, unfair labor
23 practices within the meaning of Section 8(a)(1) and (3) of the Act, which are affecting
24 commerce within the meaning of Section 2(6) and (7) of the Act [29 U.S.C. § 152 (6)
25 and (7)], for which a remedy will be ordered by the Board, but that the Board's order for
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1 such remedy will be frustrated without the temporary injunctive relief sought herein.
2 Petitioner asserts that there is a substantial likelihood of success in prevailing in the
3 underlying administrative proceedings in Cases 28-CA-143974, 28-CA-148919, and 28-
4 CA-149898 (Cases 28-CA-143974 et al.), and establishing that Respondent has engaged
5 in, and is engaging in, unfair labor practices in violation of Section 8(a)(1) and (3) of the
6 Act by, inter alia, interrogating employees about their union and concerted activities;
7 engaging in surveillance of employees engaged in union and concerted activities;
8 creating the impression of surveillance of employee union and concerted activities;
9 threats of unspecified reprisals against employees for engaging in union or concerted
10 activity; soliciting employee complaints and grievances to discourage employees from
11 engaging in union or concerted activity; granting of benefits to employees to discourage
12 employees from engaging in union or concerted activity; promulgating unlawful
13 workplace rules in response to its employees' union and concerted activities; issuing a
14 written warning to a key union organizer; and unlawfully discharging two active union
15 supporters. In support thereof, and of the request for temporary injunctive relief,
16 Petitioner, upon information and belief, shows the following:
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19 (a) At all material times, Respondent has been a corporation with
20 offices and places of business in Phoenix, Arizona, at 5127 West Indian School Road
21 (the 51st Avenue facility), 7502 West Thomas Road (the 75th Avenue facility), and
22 3130 East Thomas Road (the 31st Street facility) (collectively, Respondent's facilities),
23 and has been engaged in the retail sale of groceries and related items.
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(b) In conducting its operations during the 12-month period ending January 6, 2015, Respondent purchased and received at Respondent's facilities goods valued in excess of \$50,000 directly from points outside the State of Arizona.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act [29 U.S.C. § 152(2), (6) and (7)] and has been conducting and transacting business in this judicial district.

(d) At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act [29 U.S.C. § 152(5)].

(e) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act [29 U.S.C. § 152(11)] and agents of Respondent within the meaning of Section 2(13) of the Act [29 U.S.C. § 152(13)]:

James Lubary	-	Vice President of Operations
Brenda Sredanovich	-	Human Resources Manager
Luis Trujillo	-	Store Director
Juan Guzman	-	Store Director
Jose Guerrero	-	Store Director
Veronica Tapia	-	Front End Supervisor
Rosalva Bravo	-	Deli Department Manager
Victor M. Castro	-	Assistant Bakery Manager

(f) Since about August 1, 2014, Respondent, by issuing an employee handbook, promulgated and since then has maintained the following rules:

(1) Guidelines (Social Media): Remember that any conduct adversely affecting your work performance, your coworker's performance or affecting in any other form clients, suppliers, people who work on behalf of the company or the

1 legitimate commercial interests of the enterprise can lead to disciplinary action, which
2 can reach up to dismissal.

3 (2) Only Publish Appropriate and Respectful Content (Social
4 Media): Keep the confidentiality of trade secrets and private or confidential information
5 of the company. Trade secrets may include information relating to the development of
6 systems, processes, products, technical knowledge and technology. Do not post internal
7 reports, policies, procedures or other confidential communications related to domestic
8 businesses.

10 (3) Only Publish Appropriate and Respectful Content (Social
11 Media): Only express your personal opinions. Never represent yourself as a
12 spokesperson for the company. If the company is the subject of the content that you are
13 creating, be clear and open about the fact that you are an employee and make it clear
14 that your views do not represent those of the company, colleagues, clients, suppliers or
15 people working on behalf of the company. If you do indeed publish a blog or publish
16 interest content related to the work you do or subjects related to the company, make it
17 clear that you are not speaking on behalf of the company.

19 (4) Personal Cellular Telephones, Pagers, or Similar Devices:
20 Personal cellular phones, pagers, and other similar personal electronic devices should
21 not be used or worn while you are working. Such devices should be stored in your
22 locker (if one is provided) or in your vehicle; they should not be carried around (even if
23 turned off or on 'silent' mode) while you are working.

1 (g) Respondent promulgated and maintained the rules described above
2 in paragraph 5(f) to discourage employees from assisting the Union or engaging in other
3 concerted activities.

4 (h) About August 1, 2014, Respondent, by issuing its employees a new
5 handbook, threatened its employees with unspecified reprisals because of their union
6 activities.

7 (i) About August 1, 2014, Respondent, at Respondent's facilities,
8 increased employee benefits by granting its employees with one-year tenure, two paid
9 sick days a year to dissuade them from supporting the Union as their bargaining
10 representative.

11 (j) About December 23, 2014, Respondent, by Luis Trujillo (Trujillo),
12 at the 51st Avenue facility:

13 (1) threatened its employees with unspecified reprisals because
14 of union activities;

15 (2) interrogated its employees about their union membership,
16 activities, and sympathies; and

17 (3) by asking its employees working at the 51st Avenue facility
18 the name of the employees participating in the Union's protest at the 51st Avenue
19 facility, created an impression among its employees that their union activities were
20 under surveillance by Respondent.

21 (k) About December 26, 2014, Respondent, by Veronica Tapia, at the
22 51st Avenue facility:

1 (1) threatened its employees with unspecified reprisals because
2 of union activities;

3 (2) interrogated its employees about their union membership,
4 activities, and sympathies; and

5 (3) by asking its employees about their participation in a Union
6 protest at the 51st Avenue facility, created an impression among its employees that their
7 union activities were under surveillance by Respondent.

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9 (l) About January 1, 2015, Respondent, by Brenda Sredanovich, at the
10 51st Avenue facility, by soliciting its employee complaints and grievances, promised its
11 employees increased benefits and improved terms and conditions of employment if they
12 refrained from union organization activity.

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14 (m) About January 30, 2015, Respondent, by Trujillo, at the 51st
15 Avenue facility:

16 (1) interrogated its employees about their union membership,
17 activities, and sympathies;

18 (2) by reporting to its employees that they had been seen talking
19 to other employees about the Union, created an impression among its employees that
20 their union activities were under surveillance by Respondent; and

21 (3) by oral announcement, promulgated and since then has
22 maintained an overly broad and discriminatory rule prohibiting its employees from
23 engaging in union activities at work.
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1 (n) About February 6, 2015, Respondent, by Trujillo, at the 51st
2 Avenue facility:

3 (1) interrogated its employees about their union membership,
4 activities, and sympathies and the union membership, activities, and sympathies of other
5 employees; and
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7 (2) by reporting to its employees that they had been seen at the
8 Union's protest at the 75th Avenue facility and by reporting that Trujillo knew the
9 identity of the employee who had been with its employees at the Union's protest,
10 created an impression among its employees that their union activities were under
11 surveillance by Respondent.

12 (o) About March 4, 2015, Respondent, by Juan Guzman, at the 75th
13 Avenue facility, by photographing its employees participating in the Union's protest at
14 the 75th Avenue facility, engaged in surveillance of employees engaged in union
15 activities.
16

17 (p) About March 5, 2015, Respondent, by James Lubary, at the 51st
18 Avenue facility:

19 (1) interrogated its employees about their union membership,
20 activities, and sympathies;
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22 (2) by reporting to its employees that he had seen a photograph
23 of them participating in the Union's protest at the 75th Avenue facility, created an
24 impression among its employees that their union activities were under surveillance by
25 Respondent; and
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1 (3) by soliciting its employee complaints and grievances,
2 promised its employees increased benefits and improved terms and conditions of
3 employment if they refrained from union activity.

4 (q) About March 5, 2015, Respondent, by Trujillo, at the 51st Avenue
5 facility, interrogated its employees about their union membership, activities, and
6 sympathies.

7
8 (r) About March 27, 2015, Respondent, by Trujillo, at the 51st Avenue
9 facility:

10 (1) interrogated its employees about their union membership,
11 activities and sympathies; and

12 (2) by asking its employees about their participation at the
13 Union's protest at the 31st Street facility, created an impression among its employees
14 that their union activities were under surveillance by Respondent.

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16 6. (a) About December 29, 2014, Respondent issued a written warning to
17 its employee Maria Neyoy.

18 (b) About February 5, 2015, Respondent discharged its employee
19 Scarlet Sandoval.

20 (c) About March 13, 2015, Respondent discharged its employee
21 Leylani Salgado.

22 (d) Respondent engaged in the conduct described above in paragraphs
23 6(a) through 6(c) because the named employees of Respondent assisted the Union and
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1 engaged in concerted activities and to discourage employees from engaging in these
2 activities.

3 7. By the conduct described above in paragraph 5(f) through 5(r),
4 Respondent has been interfering with, restraining, and coercing employees in the
5 exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1)
6 of the Act.
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8 8. By the conduct described above in paragraph 6(a) through 6(d),
9 Respondent has been discriminating in regard to the hire or tenure or terms and
10 conditions of employment of its employees, thereby discouraging membership in a labor
11 organization in violation of Section 8(a)(1) and (3) of the Act.
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13 9. The unfair labor practices of Respondent described above affect
14 commerce within the meaning of Section 2(6) and (7) of the Act.

15 10. Certain of the unfair labor practices of Respondent described above have
16 taken place within this judicial district.

17 11. Upon information and belief, unless injunctive relief is immediately
18 obtained, it can fairly be anticipated that employees will permanently and irreversibly
19 lose the benefits of the Board's processes and the exercise of statutory rights for the
20 entire period required for the Board adjudication of this matter, a harm which cannot be
21 remedied in due course by the Board.
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23 12. There is no adequate remedy at law for the irreparable harm being caused
24 by Respondent's unfair labor practices, as described above in paragraph 5.
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1 13. Granting the temporary injunctive relief requested by Petitioner will cause
2 no undue hardship to Respondent.

3 14. In balancing the equities in this matter, if injunctive relief as requested is
4 not granted, the harm to the employees involved herein, to the public interest, and to the
5 purposes of the Act, would clearly outweigh any harm that the grant of such injunctive
6 relief will work on Respondent.

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8 15. Upon information and belief, it may fairly be anticipated that unless
9 Respondent's conduct of the unfair labor practices described above in paragraph 5 is
10 immediately enjoined and restrained, Respondent will continue to engage in those acts
11 and conduct, or similar acts and conduct constituting unfair labor practices, during the
12 proceedings before the Board and during any subsequent proceedings before a United
13 States Court of Appeals, with the predictable result of continued interference with the
14 rights of employees to engage in activities protected by Section 7 of the Act, with the
15 result that employees will be deprived of their Section 7 rights under the Act, inter alia,
16 to form, join, or assist a labor organization or to refrain from any and all such activities,
17 and will be denied their statutory right to engage in other concerted activities for the
18 purpose of collective bargaining or other mutual aid or protection, all to the detriment of
19 the policies of the Act, the public interest, the interest of the employees involved, and
20 the interest of the Union.

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23 16. Upon information and belief, to avoid the serious consequences set forth
24 above, it is essential, just, proper, and appropriate for the purposes of effectuating the
25 policies of the Act and the public interest, and to avoid substantial, irreparable, and
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1 immediate injury to such policies and interest, and in accordance with the purposes of
2 Section 10(j) of the Act that, pending final disposition of the matters now before the
3 Board, Respondent be enjoined and restrained from committing the acts and conduct
4 alleged above, similar acts and conduct, or repetitions thereof, and also be ordered to
5 take the affirmative action set forth below in paragraph 2.
6

7 WHEREFORE, Petitioner prays:

8 1. That the Court issue an order directing Respondent to appear before this
9 Court, at a time and place fixed by the Court, and show cause why an injunction should
10 not issue and, after consideration, issue an injunction directing, enjoining, and
11 restraining Respondent, its officers, agents, servants, representatives, successors, and
12 assigns, and all persons acting in concert or participation with them, pending the final
13 disposition of the matters herein now pending before the Board, to cease and desist
14 from:
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16 (a) promulgating overly-broad work rules in response to its
17 employees' union or concerted activities;

18 (b) threatening employees because they engage in union or concerted
19 activities;
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21 (c) interrogating employees about their union or concerted activities;

22 (d) soliciting employee complaints and grievances to discourage
23 employees from engaging in union or concerted activities ;

24 (e) engaging in the surveillance of employees who engage in union or
25 concerted activities;
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1 (f) creating the impression that it is engaging in the surveillance of
2 employees who engage in union or concerted activities;

3 (g) promising employees benefits if they refrain from participating in
4 union or concerted activities;

5 (h) issuing discipline to employees because they engage in union or
6 concerted activities;

7 (i) discharging employees because they engaged in union or concerted
8 activities; and
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10 (j) in any other manner interfering with, restraining, or coercing
11 employees in the exercise of the rights guaranteed them under Section 7 of the National
12 Labor Relations Act.

13 2. That the Court require Respondent to take the following affirmative
14 actions:
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16 (a) Within five (5) days of the Court's issuance of an Order Granting
17 Temporary Injunction (Injunction Order), offer, in writing, Scarlet Sandoval and
18 Leylani Salgado, in writing, immediate interim reinstatement to their former jobs, at
19 their previous wages and other terms and conditions of employment, displacing if
20 necessary any worker(s) hired or transferred to replace them, or if their former jobs no
21 longer exists, to a substantially equivalent position, without prejudice to their seniority
22 or any other rights or privileges previously enjoyed;

23 (b) Within fourteen (14) days of the Court's issuance of an Injunction
24 Order, remove from its files any and all records of its discharge of Scarlet Sandoval and
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1 Leylani Salgado, and within three (3) days thereafter, notify them in writing that this
2 was done, and that the material removed will not be used as a basis for any future
3 personnel action against them or referred to in response to any inquiry from any
4 employer, employment agency, unemployment insurance office, or reference seeker, or
5 otherwise used against them;
6

7 (c) Within fourteen (14) days of the Court's issuance of an Injunction
8 Order, remove from its files any and all records of its disciplinary warning issued to
9 Maria Neyoy, and within three (3) days thereafter, notify her in writing that this was
10 done, and that the material removed will not be used as a basis for any future personnel
11 action against her or referred to in response to any inquiry from any employer,
12 employment agency, unemployment insurance office, or reference seeker, or otherwise
13 used against her;
14

15 (d) Within fourteen (14) days of the Court's issuance of an Injunction
16 Order, rescind the following work rules that were promulgated on or about August 1,
17 2014, and inform its employees, in writing, that this has been done: Guidelines (Social
18 Media); Only Publish Appropriate and Respectful Content (Social Media); and Personal
19 Cellular Telephones, Pagers, or Similar Devices.
20

21 (e) Post copies of the Court's Injunction Order at Respondent's
22 facilities in all places where notices to its employees are normally posted, as well as
23 translations of the Court's order provided to the Respondent by the Regional Director of
24 the Board in languages other than English as necessary to ensure effective
25 communication to Respondent's employees; maintain these postings during the Board's
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1 administrative proceeding free from all obstructions and defacements; grant all
2 employees free and unrestricted access to said postings; and grant to agents of the Board
3 reasonable access to its facilities to monitor compliance with this posting requirement;

4 (f) Within ten (10) days of the Court's issuance of an Injunction
5 Order, hold a mandatory meeting or meetings, during work time or at a time scheduled
6 to insure maximum attendance, at which the Court's order is to be read to the employees
7 by a responsible management official in the presence of an agent of the Board, or, at
8 Respondent's option, by an agent of the Board in that official's presence, translated into
9 languages other than English as necessary to ensure the effective communication with
10 Respondent's employees;

11 (g) Within twenty (20) days of the Court's issuance of an Injunction
12 Order, file an affidavit of compliance with the Court, and a copy with the Regional
13 Director for Region 28, describing with specificity what steps it has taken to comply
14 with the terms of the Court's Order, including proof of service of such documents.

15 3. That upon return of the Order to Show Cause, the Court issue an Order
16 Granting Temporary Injunction enjoining and restraining Respondent in the manner set
17 forth above.

18 4. That the Court grant such further and other relief as may be just and
19 proper.

20 Dated at Phoenix, Arizona, this 5th day of June 2015.

21 /s/ Judith E. Dávila
22 Judith E. Dávila, Esq.
23 Sandra L. Lyons, Esq.

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On behalf of:
Cornele A. Overstreet, Regional Director
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